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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 FRANK FISHER, a single man,

10 Plaintiff,

11 v.

12 J. BYRON HOLCOMB and JANE DOE
13 HOLCOMB, a marital community,

14 Defendant.

CASE NO. C10-5510BHS

ORDER GRANTING
PLAINTIFF'S MOTION
TO REMAND

15 This matter comes before the Court on Plaintiff's ("Fisher") motion to remand
16 back to state court. Dkt. 10. The Court has considered the pleadings filed in support of the
17 motion and the remainder of the file and hereby grants the motion for the reasons stated
18 herein.

19 **I. DISCUSSION**

20 On July 21, 2010, Defendants (collectively, "Holcomb") removed this matter from
21 state court. On August 5, 2010, Fisher moved to remand the case back to state court. Dkt.
22 10. Holcomb did not respond to the motion to remand.¹ On August 26, 2010, Fisher
23 replied. Dkt. 24.

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26 ¹Although Holcomb did file what he termed a "global reply," which he apparently
27 intended to be considered, at least in part, as a response to Fisher's motion to remand (Dkt. 10),
28 it does not actually respond to the motion. Therefore, the Court does not treat it as such. See Dkt.
14.

1 **A. Failure to Respond, CR 7(d)(3)**

2 Because Holcomb failed to respond to the instant motion, it is deemed to have
 3 merit. *See* Local Rule Court Rule 7(d)(3). Although Holcomb has expressed to the Court
 4 some trouble with receiving documents filed on the ECF, Fisher served the instant motion
 5 on Holcomb independent of the ECF on August 5, 2010 at 11:16 a.m. via US mail and
 6 email. *See* Dkt. 10 at 11 (certificate of service). Further, Holcomb has admitted that he
 7 receives Fisher's pleadings vial email. *See* Dkt. 22 at 6. Therefore, the Court could grant
 8 the instant motion on this basis alone. *See* CR 7(d)(3).

9 **B. Merit of Fisher's Motion to Remand**

10 Generally, federal jurisdiction is determined from the face of the complaint. *See*
 11 Fed. R. Civ. P. 8; *see also* *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139
 12 (9th Cir. 2003). Federal jurisdiction is either based upon diversity of citizenship or federal
 13 question jurisdiction. *See* 28 U.S.C. §§ 1331, 1332. A plaintiff, not a defendant, is the
 14 master of the complaint. *See, e.g., Calif. ex. rel. Lockyer v. Dynenergy, Inc.*, 375 F.3d 831,
 15 839 (9th Cir. 2004) (a plaintiff may “choose to have the cause heard in state court . . . by
 16 eschewing claims based on federal law”).

17 In the present matter, the parties are not diverse, and Fisher pleaded only state law
 18 claims in his complaint, i.e., no federal question exists. *See, e.g.,* Dkt. 1-2 at 25-26 (copy
 19 of complaint). Therefore, the Court lacks subject matter jurisdiction over this matter and it
 20 must be remanded. *See* 28 U.S.C. 1447(c).

21 **C. Remand and Fees**

22 Because the court lacks subject matter jurisdiction over this matter, it is remanded.
 23 *See* 28 U.S.C. § 1447(c). Holcomb shall pay “just costs and any actual expenses,
 24 including attorney fees, incurred as a result of the removal.” *Id.*
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1 **II. ORDER**

2 Therefore, it is hereby **ORDERED** that Fisher's motion to remand (Dkt. 10) is
3 **GRANTED** and Holcomb must pay reasonable attorney fees and costs, as discussed
4 herein. All other pending motions are terminated.

5 DATED this 1st day of September, 2010.

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8 BENJAMIN H. SETTLE
9 United States District Judge